IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 17033 of 2007(C)

AGAINST THE ORDER IN EP 8/2004 IN
OS.528/1996 of MUNSIF COURT, KANJIRAPPALLY
.....

PETITIONER:

SHAJI, S/O. LATE ABRAHAM,
THAKIDIYIL HOUSE, VADAVATHOOR KARA AND POST,
VIJAYAPURAM VILLAGE, KOTTAYAM TALUK.

BY ADV. SRI.P.KURUVILLA JACOB

RESPONDENTS:
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1. MATHEW @ BABY, S/O. MATHAN,
MANJACKAL HOUSE, CHERUVALLY KARA AND VILLAGE,
KOTTAYAM DISTRICT.

2. RAGHAVAN NAIR, S/O. RAMAN NAIR,
CHOORAPPADIYIL HOUSE, CHERUVALLY KARA AND VILLAGE,
KOTTAYAM DISTRICT.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.V.SANJEEV
SRI.T.A.VIJAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF JUDGMENT DATED 11.06.98 IN O.S. NO. 528/1996 OF THE MUNSIFF COURT, KANJIRAPPALLY.

EXT.P2: TRUE COPY OF PETITIONER'S APPLICATION SUBMITTED BEFORE THE LAND TRIBUNAL KOTTAYAM ON 17.05.2005.

EXT.P3: TRUE COPY OF E.A. NO. 71/07 FILED BY THE PETITIONER IN E.P.NO. 8/04 IN O.S. NO. 528/1996 OF THE MUNSIFF COURT, KANJIRAPPALLY.

EXT.P4: TRUE COPY OF NOTICE DATED 06.07.2007 ISSUED TO PETITIONER FROM THE LAND TRIBUNAL KOTTAYAM.

EXT.P5: TRUE COPY OF THE PLAINT IN O.S. NO. 71/07 OF THE SUB COURT AT PALA.

EXT.P6: TRUE COPY OF THE COMMISSION REPORT FILED IN O.S. NO. 71/07 OF THE SUB COURT AT PALA ON 04.08.2007.

RESPONDENTS' EXHIBITS:

EXT. R2(a): TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 23734 OF 2004 PASSED BY THIS HONOURABLE COURT DATED 28.06.2005.

EXT.R2(b): TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 19587 OF 2005 PASSED BY THIS HONOURABLE COURT DATED 17.01.2006.

/True Copy/

P.A to Judge.

M.N. KRISHNAN , J

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W.P.(C) NO. 17033 OF 2007

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Dated this the 20th day of August, 2007.

JUDGMENT

This writ petition is preferred with a prayer to direct the Munsiff, Kanjirappally to consider Ext.P3 application on merits before passing any order in E.P. No. 8/2004 in O.S. No. 528/1996 granting delivery of the plaint schedule property. The decree that has been put into execution relates to 11.20 ares of land comprised in Survey No. 125/2. It is the case of the petitioner that property having larger extent namely 42 Ares 60 sq. metres were taken on lease by the father of the writ petitioner from one Mathan and on the death of the father, he had succeeded to the tenancy right. Therefore, he is entitled to right and interest over the property and it cannot be delivered in an execution proceedings. On the other hand, the learned counsel for the respondent would contend that whenever the decree is put in execution a person on the behest of the judgment debtor comes with a petition of one right or other and thereby he seeks time to extend the delivery of the property. It is a well settled proposition of law now that one need not have to wait till he is actually dispossessed in order to approach the court under Order XXI Rule 97, 98 or 99. When the

apprehension is well founded he can move the court and the civil procedure code mandates that enquiry has to be conducted in accordance with law under Order XXI Rule 101 of the C.P.C which means it has to be tried as a suit and party cannot be dispossessed before the final adjudication is done on the matter. It is unfortunate that the decree holder is facing stumbling block whenever he put decree into the execution but when application comes under the relevant provision of the CPC it has to be answered and therefore I direct the Munsiff Court, Kanjirappally to dispose of Ext.P3 claim application after permitting the decree holder herein to file counter statement on the petition and permit both the parties to adduce evidence in accordance with law and dispose of the matter. Till final order is passed in the claim application, the court below is directed not to effect delivery of the property. The court below shall dispose of the matter within a time frame of two months from today and both the parties are directed to co-operate with the learned Munsiff for expeditious disposal of the case.

M.N. KRISHNAN, JUDGE.

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